- Thank you, and good morning. I am Phil Auclair, Manager of Market & Regulatory Affairs at Mirant. I am pleased to participate in today's conference.

- First, I would like to acknowledge the tremendous efforts of the FERC, the California ISO, and the California PUC in working with the industry to resolve some very complicated issues.

- I will address the following question that FERC is asking this panel:

  "Does the CA ISO MD02 proposal provide market participants who wish to hold CRRs an adequate opportunity to obtain them?"

- The answer to this question is clearly:

  NO.

- Only a CRR auction approach immediately and unconditionally provides all market participants an adequate opportunity, as well as an efficient mechanism, to value and purchase these property rights to congestion revenues. (All auction revenues would flow to the customers who, after all, have paid for the transmission infrastructure. This scheme recognizes that auction revenues are the transmission customer's financial property rights and, in addition, transparently prices and credits the customers' account.)

- An auction approach is critical to assure that the true owners of these rights - Core and Non Core consumers - are properly protected and compensated.

- Moreover, an auction approach facilitates the development of competitive CRR secondary forward contract markets, which transparently price and efficiently allocate these instruments.

- Most recognize that workably competitive spot markets cannot develop without robust competitive forward markets. (Given the locational dimension of electricity, it is imperative that competitive CRR markets develop as soon as possible.)

- The California ISO, however, proposes to allocate CRRs to existing Load Serving Entities (LSEs) on behalf of their customers, and to the State Water Project.

- Without additional rules, Transmission-Owning LSEs under the CA ISO proposal can easily become ‘de facto’ property owners of CRRs with little incentive to sell even unused rights to other market participants. This would thus eliminate ‘supply’ options for both the core and non-core customer base.

- It is Mirant’s hope that the proposed CA ISO CRR allocation approach is only a very short transitional feature to a superior CRR auction approach.

- In the meantime, under the proposed interim allocation approach, the California ISO and California PUC need to implement rules to ensure that existing Transmission-Owning LSEs do not indeed become ‘de facto’ property owners of CRRs.

- Only then, can the benefits of CRRs be made available to all market participants - including the often forgotten retail load - in a non-discriminatory and comparable manner.

- There are two necessary, though not sufficient, conditions that must be met to ensure that existing Load Serving Entities not become 'de facto' owners of the pre-allocated congestion revenue rights.

  The first necessary condition is: CA ISO and California PUC rules must make it explicit that CRRs do not belong to LSEs.

  The second necessary condition is: The California PUC must adopt rules to allow third-party supply access to the retail load that owns the CRRs.

  Please let me elaborate on these two conditions:

  Condition One: CA ISO rules must make it explicit that CRRs belong only to retail load, core and non-core, and any other participant who pays for the transmission infrastructure.

  Thus, an LSE's only role is to administer the accounting associated with CRRs on behalf of the load it serves - be it residential, or commercial, or industrial.

As such, all CRRs must be portable. That is, CRRs must automatically travel with the load if it decides to switch suppliers. The new supplier would then administer the CRRs on behalf of its new load.

Under no circumstances should a load have to wait for a month, a year, or even two years for a CRR allocation process to take place before it can switch suppliers. This is especially significant to the large non-core customer group on a pure economics basis.

(As a side note: 'I' am a little confused by the CA ISO proposal that provides an LSE the right to sell CRRs in the CA ISO auction or in secondary markets. If load owns the CRRs, and these instruments are to be allocated to load, then how can the CA ISO confer the right to sell CRRs on the LSE?)

<u>Condition 2:</u> The California PUC must adopt definitive and clear rules to allow third-party supply access to the retail load that owns the CRRs.

Under the CA ISO's 'allocation approach', FERC's objective to provide market participants with adequate access to CRRs can only be achieved by satisfying the following objective:

"Provide third-party supply with adequate access to the LOAD THAT HAS THE CRRs."

So if the California PUC does not adopt rules that , at a minimum, permit a core/non core structure, then by definition, the CA ISO proposal does not provide third-party supply adequate access to CRRs.

- Furthermore, if the two necessary conditions are not met, then California will face a situation where a transmission-owning LSE becomes the 'de facto' congestion revenue right property owner on its own constrained transmission system.

- As such, all efforts to establish non-discriminatory and comparable access to constrained transmission capacity will have come full circle to the situation California faced before it unbundled transmission operations and pricing from generation.

Thank You